

CALIFORNIA STATE PERSONNEL BOARD MEETING
801 Capitol Mall
Sacramento, California

Public Session Location - Room 150
Closed Session Location - Room 141

MID-MONTH BOARD MEETING MINUTES

NOVEMBER 20, 2001

PUBLIC SESSION OF THE STATE PERSONNEL BOARD

1. ROLL CALL

BOARD MEMBERS PRESENT:

Ron Alvarado, President
William Elkins, Vice President
Florence Bos, Member
Richard Carpenter, Member

2. REPORT OF THE EXECUTIVE OFFICER - Walter Vaughn

The Board was advised of the following:

- A. The Governor has distributed a list of \$2.2 billion dollars of expenditures that he is directing departments to freeze so that the Legislature can consider capturing the dollars for the projected General Fund deficit. State Personnel Board staff has already submitted to Finance proposals for reducing operating expenses and disencumbering current and prior year contracts. Non-essential current year expenditures have been frozen.
- B. State Personnel Board staff will submit a draft of the legislatively mandated audit of the Board of Prison Terms to the State Personnel Board members for review at their December 4, 2001, meeting.
- C. State Personnel Board staff is completing an audit of the discrimination complaint procedures and files in

sixteen selected state departments. Staff will be working with the State Compensation Insurance Fund (the only agency to deny access) to review their files and records.

- D. The California State Employees Association (CSEA) and the Department of Personnel Administration (DPA) have reached an agreement on a MOU that will be voted on by CSEA members. State Personnel Board staff has requested a copy on any language in the agreement concerning "Post and Promote" to determine whether the language conflicts with the merit requirements for appointments and promotions.

3. REPORT OF THE CHIEF COUNSEL - Elise Rose

The Chief Counsel reported on the following:

Litigation:

- A. Kim v. Department of Parks and Recreation (Case No. GIC 7690770) - San Diego Superior Court denied the petition for writ of mandamus, and upheld the State Personnel Board's sustaining of dismissal.
- B. Raynor v. State Personnel Board (SPB) California Department of Corrections (Case No. 00CS01661) - Sacramento Superior Court denied the petition for writ of mandamus, and upheld the State Personnel Board's sustaining of dismissal.
- C. Miller v. SPB/Department of Mental Health - Los Angeles Superior Court denied the petition for writ of mandamus, and upheld the State Personnel Board's sustaining of dismissal.
- D. DeWitt v. SPB/Department of Social Services - United States District Court dismisses discrimination lawsuit on grounds that the suit against the state is barred by 11th amendment sovereign immunity.
- E. International Union of Operating Engineers (IUOE) v. State Personnel Board (SPB) - IUOE has appealed the decision of the Public Employment Relations Board (PERB) dismissing complaint against SPB to the PERB Board.

Other:

- A. State Employment Mediation Program - Informational seminar held last week was attended by over 100 employees and was well-received.

4. REPORT ON LEGISLATION - Judy Balmain

No report was presented

BOARD ACTIONS

5. STATE PERSONNEL BOARD SUMMARY MINUTES OF NOVEMBER 6-7, 2001

ACTION: Adopted on November 20, 2001.

VOTE: Alvarado, Elkins, Bos, Carpenter - Aye.

6. ADMINISTRATIVE LAW JUDGE CASES

On November 20, 2001, the Board adopted the following decisions presented by Elise Rose, Chief Counsel, California State Personnel Board.

VOTE: Alvarado, Elkins, Bos, Carpenter - Aye.

PROPOSED DECISIONS

TAMI POPKE, CASE NO. 00-2196E

Appeal from discrimination complaint

Office Technician

Sierra Conservation Center

Department of Corrections

ACTION: Discrimination complaint dismissed

GERALD BELFLOWER, CASE NO. 01-1800

Appeal from five-percent reduction

in salary for three months

Vocational Instructor

Department of Corrections

ACTION: Five percent reduction in salary for three months modified to an official/formal reprimand

CHRISTIE J. FERGUSON, CASE NO. 01-2463

Appeal from official reprimand

Correctional Officer

San Diego Correctional Facility

Department of Corrections

ACTION: Official reprimand sustained

ROYCE HENSON, CASE NO. 99-4447

Appeal from demotion from the position

of Staff Services Manager II to
Associate Governmental Program Analyst
Department of Forestry and Fire protection
ACTION: Demotion modified to one-step reduction in salary
for one year

PETITIONS FOR REHEARING

KIMBERLY S. ARNOLD, CASE NO. 00-3959
Appeal from dismissal
Correctional Officer
San Quentin State Prison
Department of Corrections
ACTION: Petition for rehearing filed by appellant granted
and remanded to the Administrative Law Judge

DON T. CIMARUSTI, CASE NO. 99-1898
LARRY A. COON, CASE NO. 99-2019
JOHN M. SAFFOLD, CASE NO. 99-2014
Appeal from dismissal
Youth Correctional Officer
Fred C. Nelles Youth Correctional Facility
Department of the Youth Authority
ACTION: Petition for rehearing filed by respondent denied

JENNIFER L. KILL, CASE NO. 00-2164
Appeal from dismissal
Supervising Cook I (Correctional Facility)
California Correctional Institution at Tehachapi
Department of Corrections
ACTION: Petition for rehearing filed by respondent denied

7. RESOLUTION RE NOTICE OF GOVERNMENT CODE SECTION 18671.1
EXTENSION.

ACTION: See pages 12-15

8. WITHHOLD APPEALS
On November 20, 2001, the Board adopted the following
decisions presented by Laura Aguilera, Assistant Executive
Officer, California State Personnel Board.
VOTE: Alvarado, Elkins, Bos, Carpenter - Aye.

GLORIA BARRETT, CASE NO. 01-0623
Classification: Office Technician

Department of Motor Vehicles

ACTION: DENIED

GWENDOLYN BELION, CASE NO. 01-0344

Classification: Youth Correctional Officer

Department of the Youth Authority

ACTION: DENIED

THOMAS CAMP, CASE NO. 01-0347

Classification: Youth Correctional Counselor

Department of the Youth Authority

ACTION: DENIED

DARIO ELIZALDE, CASE NO. 01-0621

Classification: Correctional Officer

Department of Corrections

ACTION: DENIED

VINCENT JOHNSON, CASE NO. 01-0814

Classification: Correctional Officer

Department of Corrections

ACTION: DENIED

GEORGE RODRIQUEZ, CASE NO. 01-0721

Classification: Correctional Officer

Department of Corrections

ACTION: GRANTED

MARK RUTLEDGE, CASE NO. 01-0925

Classification: Cadet, CHP

California Highway Patrol

ACTION: DENIED

THOMAS SCANLAN, CASE NO. 01-0620

Classification: Correctional Officer

Department of Corrections

ACTION: DENIED

MATTHEW CARROLL, CASE NO. 01-0369

Classification: Correctional Officer

Department of Corrections

ACTION: DISMISSED

MICHAEL MANDELL, CASE NO. 01-0276

Classification: Cadet, CHP

California Highway Patrol

ACTION: DISMISSED

9. MEDICAL APPEALS

On November 20, 2001, the Board adopted the following decisions presented by Laura Aguilera, Assistant Executive Officer, California State Personnel Board.

VOTE: Alvarado, Elkins, Bos, Carpenter - Aye.

DEBRA MORENO, CASE NO. 01-2205
Classification: Correctional Officer
Department of Corrections
ACTION: DENIED

THOMAS BISGROVE, CASE NO. 01-2807
Classification: Cadet, CHP
California Highway Patrol
ACTION: WITHDRAWN

JUAN LOPEZ, CASE NO. 01-2389
Classification: Correctional Officer
Department of Corrections
ACTION: DISMISSED

CARMEN RINCON, CASE NO. 01-2109
Classification: Youth Correctional Officer
Department of the Youth Authority
ACTION: DISMISSED

10. EXAMINATION APPEALS

MINIMUM QUALIFICATIONS - NONE

MERIT ISSUE COMPLAINTS

On November 20, 2001, the Board adopted the following decisions presented by Laura Aguilera, Assistant Executive Officer, California State Personnel Board.

VOTE: Alvarado, Elkins, Bos, Carpenter - Aye.

(Examination)

CYNTHIA TIGH, CASE NO. 01-0668
Classification: Senior Special Agent, CF
Department of Corrections
ACTION: WITHDRAWN

(Merit Issue Complaint)

FARES BOTROS, CASE NO. 00-3507
Classification: Transportation Engineer (Civil)
Department of Transportation
ACTION: DENIED

11. RULE 212 OUT-OF-CLASS APPEALS - NONE

VOIDED APPOINTMENT APPEALS

RULE 211 APPEALS

On November 20, 2001, the Board adopted the following decisions presented by Laura Aguilera, Assistant Executive Officer, California State Personnel Board.

VOTE: Alvarado, Elkins, Bos, Carpenter - Aye.

(Voided Appointment)

MARY T. BARNETT, CASE NO. 3909

Classification: Staff Services Analyst (G)

Department of Corrections

ACTION: DENIED

(Rule 211)

MARIA RIVERS, CASE NO. 01-1733

Classification: Workers' Compensation Insurance Technician
State Personnel Board

ACTION: DENIED

12. NON-HEARING CALENDAR

On November 20, 2001, the Board adopted item "A". This item was presented by Karen Coffee, Chief, Personnel Resources and Innovations Division, California State Personnel Board.

VOTE: Alvarado, Elkins, Bos, Carpenter - Aye.

A. PISMO BEACH FIRE DEPARTMENT

The California Department of Forestry and Fire Protection requests that the Pismo Beach Fire Department Employees be transferred into state civil service.

13. STAFF CALENDAR ITEMS FOR BOARD INFORMATION

Staff has approved the following:

A. CADET, CALIFORNIA HIGHWAY PATROL

The California Highway Patrol proposes to raise the maximum age at which a person may be appointed to the Cadet, California Highway Patrol from 31 to 35.

ACTION: Noted

14. CAREER EXECUTIVE ASSIGNMENT (CEA) CATEGORY ACTIVITY

A. REQUESTS TO ESTABLISH NEW CEA POSITIONS CURRENTLY UNDER CONSIDERATION

(1) ASSISTANT GENERAL MANAGER, INMATE EMPLOYABILITY DIVISION

The Prison Industry Authority (PIA) proposes to allocate the above position to the CEA category. The position has responsibility for the development, statewide implementation and ongoing operation of PIA's newly created Inmate Employability Program. The department indicates that the position is at the second organizational level and reports to the General Manager, PIA.

(2) CHIEF, PLANNING AND PROJECT MANAGEMENT BRANCH

The Department of Health Services (DHS) proposes to allocate the above position to the CEA category. The Chief, Planning and Project Management Branch is responsible for the successful administration of a new Branch (new Branch established at the request of the Department of Information Technology) that provides department-wide Information Technology (IT) project planning, oversight, project management services, and develops, establishes, recommends and enforces specific project management policies, procedures and standards governing IT project planning and IT oversight for DHS. The department indicates that the position is at the third organizational level and reports to the Deputy Director/Chief Information Officer, Information Technology Services Division.

B. EXECUTIVE OFFICER DECISIONS REGARDING REQUESTS TO ESTABLISH NEW CEA POSITIONS

(1) CHIEF DEPUTY DIRECTOR

The Department of Boating and Waterways' request to allocate the above position to the CEA category has been approved effective October 25, 2001.

(2) CHIEF JUDGE

The Department of Industrial Relations' request to allocate the above position to the CEA category has been approved effective October 25, 2001.

(3) DEPUTY COMMISSIONER, WORKERS' COMPENSATION APPEALS BOARD

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The Department of Industrial Relations' request to allocate the above position to the CEA category has been approved effective October 25, 2001.

ACTION: Noted

A D J O U R N M E N T

SUBMITTED

1. GERARDO Z. HERNANDEZ, CASE NO. 01-0220. Appeal from 15 working days suspension. Department of California Highway Patrol. (Oral argument held October 2, 2001).

NO ACTION

2. STELLA OYEKA, CASE NO. 00-1045. Appeal from rejection during probation. Franchise Tax Board. (Written testimony presented November 6, 2001).

NO ACTION

3. MARK CHAMBERLAIN, CASE NO. 01-0740B. Appeal from backpay. Department of Mental Health. (Oral argument held November 6, 2001).

NO ACTION

4. SUSAN BERGER-TULLY, CASE NO. 01-0489P. Appeal from rejection during probation. (Oral argument held November 6, 2001).

NO ACTION

5. CALIFORNIA DEPARTMENT OF FORESTRY AND FIRE PROTECTION (CDF) Appeal of the CDF from the Executive Officer's June 6, 2001 disapproval of CDF's 25 personal services contracts (contracts) with various medical providers in response to the request for review submitted by the California State Employees Association (CSEA). (Hearing held November 6, 2001).

NO ACTION

6. CATO HALL, CASE NO. 00-1147P. Appeal from dismissal. Department of Corrections. (Oral argument held November 6, 2001).

NO ACTION

7. DOUGLAS FORS, CASE NO. 00-3180. Appeal from 6 working days or more suspension. Department of Transportation. (Oral argument held November 6, 2001).

NO ACTION

8. GLENN FLEMING, CASE NO. 00-3709. Appeal from 6 working days or more suspension. Office of Emergency Services. (Oral argument held November 6, 2001).

NO ACTION

9. CALIFORNIA ASSOCIATION OF PROFESSIONAL SCIENTISTS (CAPS) CAPS requests that individuals meet the minimum education requirements prior to transferring into Bargaining Unit 10 classifications. (Hearing held November 6, 2001).

NO ACTION

10. JUDITH BECK, CASE NO. 00-3025. Appeal from constructive medical termination. Department of California Highway Patrol. (Oral argument held November 7, 2001).

NO ACTION

11. TENILLE HABERMAN, CASE NO. 00-3990. Appeal from rejection during probation. Department of Corrections. (Oral argument held November 7, 2001).

NO ACTION

12. DAMON MORRIS, CASE NO. 00-3542. Appeal from dismissal. Department of the Youth Authority. (Oral argument held November 7, 2001).

NO ACTION

NOTICE OF GOVERNMENT CODE § 18671.1 RESOLUTION

Since Government Code section 18671.1 requires that cases pending before State Personnel Board Administrative Law Judges (ALJ's) be completed within six months or no later than 90 days after submission of a case, whichever is first, absent the publication of substantial reasons for needing an additional 45 days, the Board hereby publishes its substantial reasons for the need for the 45-day extension for some of the cases now pending before it for decision.

An additional 45 days may be required in cases that require multiple days of hearings, that have been delayed by unusual circumstances, or that involve any delay generated by either party (including, but not limited to, submission of written briefs, requests for settlement conferences, continuances, discovery disputes, pre-hearing motions). In such cases, six months may be inadequate for the ALJ to hear the entire case, prepare a proposed decision containing the detailed factual and legal analysis required by law, and for the State Personnel Board to review the decision and adopt, modify or reject the proposed decision within the time limitations of the statute.

Therefore, at its next meeting, the Board will issue the attached resolution extending the time limitation by 45 days for all cases that meet the above criteria, and that have been before the Board for less than six months as of the date of the Board meeting.

GOVERNMENT CODE § 18671.1 RESOLUTION

WHEREAS, Section 18671.1 provides that, absent waiver by the appellant, the time period in which the Board must render its decision on a petition pending before it shall not exceed six months from the date the petition was filed or 90 days from the date of submission; and

WHEREAS, Section 18671.1 also provides for an extension of the time limitations by 45 additional days if the Board publishes substantial reasons for the need for the extension in its calendar prior to the conclusion of the six-month period; and

WHEREAS, the Agenda for the instant Board meeting included an item titled "Notice of Government Code § 18671.1 Resolution" which sets forth substantial reasons for utilizing that 45-day extension to extend the time to decide particular cases pending before the Board;

WHEREAS, there are currently pending before the Board cases that have required multiple days of hearing and/or that have been delayed by unusual circumstances or by acts or omissions of the parties themselves;

NOW, THEREFORE, BE IT RESOLVED AND ORDERED that the time limitations set forth in Government Code section 18671.1 are hereby extended an additional 45 days for all cases that have required multiple days of hearing or that have been delayed by acts or omissions of the parties or by unusual circumstances and that have been pending before the Board for less than six months as of the date this resolution is adopted.

* * * * *

I hereby certify that the State Personnel Board made and adopted the preceding resolution at its meeting on November 20, 2001.

WALTER VAUGHN
Executive Officer
California State Personnel Board

VOTE: Alvarado, Elkins, Bos, Carpenter - Aye.